

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  CONFIDENTIALITY FOR CERTAIN INFORMATION	DOCKET NO. RMU-01-12
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**ORDER ADOPTING AMENDMENTS**

(Issued April 26, 2002)

Pursuant to Iowa Code §§ 17A.4, 22.7(3), 22.7(6), 476.1, and 476.2 (2001), the Utilities Board (Board) on December 11, 2001, issued an order in Docket No. RMU-01-12, In re: Confidentiality For Certain Information, "Order Commencing Rule Making," to consider an amendment to 199 IAC 1.9(5) concerning the granting of confidential treatment for certain specific types of information filed with the Board. The "Notice of Intended Action" was published in IAB Vol. XXIV, No. 14 (1/9/02) p. 1072, ARC 1275B.

The Board by this order will adopt the amendment with the revisions as discussed in the "Adopted and Filed" notice, which is attached to this order and incorporated herein by reference. The "Adopted and Filed" notice contains an explanation of the procedural history of the current rule making, a discussion of the comments, and the modifications to the rule making made and adopted by the Board.

**IT IS THEREFORE ORDERED:**

1. A rule making identified as Docket No. RMU-01-12 is adopted.
2. The Executive Secretary is directed to submit for publication in the Iowa Administrative Bulletin an "Adopted and Filed" notice in the form attached to and incorporated by reference in this order.

**UTILITIES BOARD**

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 26<sup>th</sup> day of April, 2002.

## **UTILITIES DIVISION [199]**

### **Adopted and Filed**

Pursuant to Iowa Code sections 17A.4, 22.7(3), 22.7(6), 476.1, and 476.2, the Utilities Board (Board) on April 26, 2002, issued an order in Docket No. RMU-01-12, In re: Confidentiality For Certain Information, "Order Adopting Amendments," that adopted a new paragraph 199 IAC 1.9(5)"c" and an amendment to 1.9(8)"b"(3). A Notice of Intended Action proposing the amendments was published in IAB Volume XXIV, No. 14 (1/9/02) p. 1072, as ARC 1275B. Under current requirements, a utility must comply with 199 IAC 1.9(6) to have information withheld from public inspection. If the Board finds after review that information is confidential pursuant to some provision of Iowa Code section 22.7, or other applicable law, the Board issues an order granting the request for confidentiality and states that the information shall be held confidential subject to the provisions of 199 IAC 1.9(8)"b"(3). In the new paragraph, the Board specifies by rule certain information to be treated as confidential without a Board order. The Board also amends 199 IAC 1.9(8)"b"(3) to add a reference to the new paragraph.

Comments were to be filed on or before January 29, 2002, and no oral presentation was scheduled. Comments were filed by the Iowa Association of Municipal Utilities (IAMU), Iowa Association of Electric Cooperatives (IAEC), MidAmerican Energy Company (MidAmerican), Interstate Power and Light Company, the Consumer Advocate Division of the Department of Justice (Consumer

Advocate), and Peoples Natural Gas Company, Division of UtiliCorp United Inc., n/k/a Aquila Inc., d/b/a Aquila Networks.

All of those commenting supported the Board's proposed paragraph granting confidential treatment to certain information concerning purchased gas adjustment (PGA) filings and energy adjustment clause (EAC) filings. Consumer Advocate objected to the granting of confidential treatment to financial information filed by applicants for a certificate of convenience and necessity to provide competitive local exchange service.

MidAmerican suggested in its comments that the proposed paragraph might not have the full intended effect with regard to PGA filings and EAC filings as stated in the Notice of Intended Action. MidAmerican agrees with the simplification of the process for granting confidentiality for the monthly filings. MidAmerican suggests that the Board should more broadly define confidential PGA information and clarify what filings are covered by the proposed paragraph. Monthly filings also include terms and prices of hedging activity and reservation charges for portfolio gas supply contracts and MidAmerican asserts that this information also meets the standards discussed by the Board in the Notice of Intended Action. MidAmerican then suggests that annual filings, periodic PGA factor changes such as Rb factor filings, and annual reconciliation filings should be included.

MidAmerican recommends that the Board add a provision to enable persons to request the Board deem additional categories of information be granted confidential treatment. These additional types of information would include the Incentive Gas Supply Procurement Program filings and confidential financial statements of its

affiliates, and MidAmerican recommends that the Board be able to grant confidential treatment for these types of filings on an ongoing basis.

IAEC comments that the material and information described in the proposed paragraph is the kind and nature as to warrant confidential treatment without the necessity of Board action. IAEC suggests though that the language "negotiated purchase prices for electric power" may be too limiting and not include customer information and power supply bills filed in EAC filings. IAEC also points out that a reference in the proposed paragraph is to "energy assistance clause" where it should reference "energy adjustment clause."

IAMU notes that the proposed paragraph and the discussion in the Preamble of the Notice of Intended Action do not mention Iowa Code section 388.9(2). This statute addresses competitive information held by municipal utilities and exempts this information from disclosure. IAMU requests the Board include this information with the other information held confidential by Board rule.

The Board finds that the reference to financial records of competitive local exchange carriers should not be removed from the new paragraph. The release of financial information of a competitive local exchange carrier attempting to enter a local market could reduce the ability of that CLEC to compete. This information has been routinely granted protection without objection and the information is only protected for 14 days without a court order if a request for release is filed. In addition, an attorney or corporate officer is required to file an affidavit that the information satisfies the provisions of Iowa Code section 22.7(3) or (6), or both. The Board recognizes that there are fewer applications being filed now than when the

Board decided to propose the new paragraph, but a reduction in the number of applications does not make each company's financial information less sensitive.

The Board finds that a reference to Iowa Code section 388.9(2) should not be included in the new paragraph as requested by IAMU. As noted by IAMU, it would be a rare occasion when a municipality would have to file this information with the Board, and the statute addresses many types of material and information other than material and information related to purchased gas adjustment filings and energy adjustment filings.

The Board finds that the proposal of MidAmerican that all information routinely determined to be confidential in PGA filings should be included to accomplish the intent of the new paragraph. The new paragraph provided that "negotiated transportation rates and prices for natural gas supply" be withheld from public inspection by rule. Based on MidAmerican's comments, the language "negotiated transportation rates and prices" may not be broad enough to encompass all costs included in the price of natural gas, such as hedging costs and reservation charges. The intent was to include all elements routinely found to be confidential in order to reduce the number of applications for confidential treatment and Board orders. The new paragraph was designed to eliminate the need for the filing of applications and issuing of orders for matters that are consistently and routinely found to be confidential.

A review of recent PGA filings shows that they do include costs of hedging and reservation charges for portfolio gas supply contracts and that this information has been treated as confidential routinely along with the negotiated transportation prices

and rates. The Board finds that this information meets the standards discussed in the Iowa Supreme Court cases discussed in the Notice of Intended Action. The Board also finds that periodic filings such as changes in PGA factors, annual filings and annual reconciliation's were intended to be included in the proposed new paragraph and will adopt the changes proposed by MidAmerican.

The Board finds that MidAmerican's request to include a provision that holds as confidential certain information filed to update materials already found to be confidential in a proceeding before the Board is beyond the scope of the new paragraph and that MidAmerican may be able to accomplish the same result with a properly crafted waiver request.

In addition, the Board will revise the proposed new paragraph to include the customer specific information and power supply bills as suggested by IAEC. This revision should accomplish the intent of the rule change to reduce the number of applications and orders addressing confidential treatment.

The Board will also adopt the amendment to 1.9(8)"b"(3) by including a reference to new paragraph 1.9(5)"c."

The new paragraph and amendment are intended to implement Iowa Code sections 17A.4, 22.7(3), 22.7(6), 476.1, and 476.2.

The new paragraph and amendment will become effective June 19, 2002.

The following new paragraph and amendment are adopted:

Item 1. Adopt **new paragraph 1.9(5)"c"** as follows:

**c.** Materials exempted pursuant to requests deemed granted by the board.

Requests that material or information be withheld from public inspection that contain

negotiated transportation rates and prices for natural gas supply, reservation charges for portfolio gas supply contracts, and terms and prices for all hedging activity including both financial hedges and weather related information included in monthly purchased gas adjustment filings, annual purchased gas adjustment filings, annual purchased gas adjustment reconciliation's, periodic filings related to changes in purchased gas adjustment factors, negotiated purchase prices for electric power, fuel, and transportation, customer specific information, power supply bills in support of energy adjustment clause filings, or the financial records filed by applicants for certificates of convenience and necessity to provide competitive local exchange service, shall be deemed granted pursuant to Iowa Code section 22.7(3), as a trade secret, or pursuant to Iowa Code section 22.7(6), as a report to a government agency which, if released, would benefit competitors and would serve no public purpose, or pursuant to both sections, provided that the confidential portions of the filings are identified and segregated and an attorney for the company or a corporate officer avers that those portions satisfy Iowa Code section 22.7(3) or (6), or both, as interpreted by the Iowa Supreme Court. The information shall be held confidential by the board upon filing and will be subject to the provisions of 199 IAC 1.9(8)"b"(3).

Item 2. Amend subparagraph 1.9(8)"b"(3) as follows:

**(3)** In the case of requests to inspect records not routinely available for public inspection under 1.9(5)"a"(1), ~~and 1.9(5)"a"(3),~~ and 1.9(5)"c," the board will notify all interested parties of the request to view the materials. The board will withhold the materials from public inspection for 14 days to allow the party who submitted the materials an opportunity to seek injunctive relief. If injunctive relief is



not requested within this period, the records will be produced for inspection.

Requests to review materials not routinely available for public inspection under any other category of paragraph 1.9(5)"a" or 1.9(5)"c," ~~or 1.9(5)"c,"~~ will be acted upon by the board. If the request is granted by the board, or is partially granted and partially denied, the person who submitted the records to the board will be afforded 14 days from the date of the written ruling in which to seek injunctive relief. If injunctive relief is not requested within this period, the records will be produced for inspection.

April 26, 2002

/s/ Diane Munns

Diane Munns  
Chairman